



COMMUNITY BLUEPRINT FOR OUTDOOR DINING

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1. INTRODUCTION

When New York City's temporary emergency outdoor dining program launched in June 2020 in response to the economic hardship brought about by the Covid-19 pandemic, its goal was to help the restaurant industry recover from the three-month lockdown. New Yorkers were all in. But now our city is nearly three years into this "temporary" program. Restaurants have been serving indoors at 100% capacity for nearly two years. The Covid-19 emergency has long been declared over. Yet, Open Restaurants continues unabated and unchecked.

The result has been a large and growing opposition from New Yorkers whose quality of life has plummeted since June 2020. This groundswell of protest has been voiced in floods of letters to City Council members, in angry and anguished testimony at Community Board hearings, and in tens of thousands of complaints to 311 about the constant, loud, late-night din, rats' nests, mounds of trash, obstructed sidewalks and streets, and filthy and dangerous sheds.

On September 30, 2022, the City Council released a draft bill, [Proposed Int. No. 31-A](#), that would make this intolerable situation permanent without resolving these concerns. Since the Council has determined that it will move forward without any public hearings on this revised legislation, our communities have developed this commonsense blueprint with concrete steps to address the quality-of-life issues created by New York City's vastly expanded outdoor dining.

At the same time, our plan allows for a **five-fold increase of outdoor dining from pre-pandemic levels while supporting the goal of equity across New York City's boroughs and neighborhoods**. The restaurant industry will still profit while neighboring residents and other small businesses will once again have a home in our neighborhoods. Our plan calls for:

- resizing the program for genuine equity across the boroughs.
- an end to the 18-month or longer continuation of the Temporary Emergency Open Restaurants program that is possible in Int. 31-A as currently drafted.
- an immediate moratorium on any new roadbed dining sheds.
- a 30-day sunset period for removal of sheds currently littering our streets commencing immediately.
- program management through the NYC Department of Consumer Affairs and Worker Protection, an agency with a proven record of success managing outdoor dining.
- adequate time for community review (the pre-pandemic 45-day review period).
- real clear path rules (the pre-pandemic 12-foot minimum sidewalk width for cafés).
- priority for non-commercial public uses of curb space over profit-generating enterprises.
- robust public discussion of any redesign of our streets and sidewalks.

These sensible, practical guidelines would restore the pre-pandemic balance between restaurant and residential concerns that we all remember well and valued so highly.

2. SCALE & DENSITY

The temporary outdoor dining program is touted as a success by virtue of its 12-fold increase in outdoor dining. But this unregulated growth is also the source of its failure. Bigger is not better. Quality of life and genuine equity come from a reasonable mix of neighborhood uses, not from supersizing the restaurant and bar industry. The pandemic required an immediate and massive emergency intervention. Now we need to scale and scope New York’s outdoor dining program to serve New Yorkers citywide.

To protect residential quality of life in areas where there are many outdoor drinking and dining establishments, and to promote opportunities in areas where there are few, the number of outdoor setups (sidewalk cafés and any other outdoor food service sites) in any Community District should be capped at 100, or the number of sidewalk cafés permitted prior to the pandemic, whichever is greater.¹ **This cap would still result in 5,900+ total opportunities for outdoor dining setups, which is an increase to more than 5 times the number of sidewalk cafés licensed in the pre-pandemic sidewalk café program.**

3. SITING: SIDEWALKS & ROADBED

Roadbed dining was an emergency measure that should be discontinued. While it comprises a little more than half of all outdoor dining sites, it has an outsized negative impact. Just 10% of restaurants participating in Open Restaurants have only roadbed dining – all others benefit from sidewalk seating.

- Outdoor dining sites should use the sidewalk-café setups that were permitted prior to the pandemic: tables, chairs, and umbrellas that can be removed and stored easily at the close of business. All other structures should be removed.
- Curb lane and roadbed dining setups are neither safe nor practical. Curb lanes need to be clear for street sweeper/brush trucks to clean the roadbed and for emergency and utility vehicles to get to our homes and businesses.
- While the legislation on outdoor dining is pending, we need an immediate moratorium on the construction of new sheds and other outdoor dining setups.
- Existing roadbed structures should be slated for immediate removal at the expense of the restaurant operator. We oppose the provisions in Intro 31-A that would allow pandemic-era dining sites to continue for an additional 18 months or more.²

¹ Three Community Districts (all in Manhattan) had more than 100 pre-pandemic outdoor dining sites – and none had more than 200. Source: New York City Open Data: Sidewalk Café Licenses and Applications. Updated March 3, 2023. <https://data.cityofnewyork.us/Business/Sidewalk-Caf-Licenses-and-Applications/qcdj-rwhu>

² **Intro 31-A provides restaurants with an additional eighteen months or more to operate outdoor dining sites**, regardless of their condition, even after legislation has been passed by the Council. The mechanisms to extend the pandemic-era Open Restaurants program include: (1) [Intro 31-A](#) will not be enacted until after the CAPA agency-level rulemaking process is completed, or 180 days later, whichever is longer, creating a delay of 6 months or more (§19, p.23); (2) any restaurant – even those operating currently non-compliant sites and those in sites that would not be conforming with the final rules outlined in the process – are allowed to take up to one year to apply to for a license under the new program during which time they are permitted to keep their outdoor sites operating without a license (§11, p.21-22; §12, p.22); and, (3) while the bill calls for non-compliant setups to be removed by October 31 in the year when the agency-level ruling making process is completed (§12, p.22), there is no guarantee that the rulemaking will be completed in time to ensure an October 31, 2023 removal, thus neighbors could be waiting until October 31, 2024 for relief. Our neighborhoods, and our city, cannot endure another 18+ months of these derelict operations.

- To avoid over-saturation in residential and mixed-use areas café licenses should be limited to no more than one or two per block (by block we mean two parallel block-faces separated by a roadway or plaza).
- If New York’s communities want to reimagine the use of the curb lane, that’s an important conversation to have. The pandemic should not permit restaurants to cut to the front of the line to stake a claim on public space in advance of a public conversation on this matter.
- Genuine public uses of the roadbed – non-commercial uses of our public spaces – deserve priority.³ Let’s rebuild our neighborhoods and our city, but we cannot rebuild in the environment that roadbed dining has created.

4. REGULATIONS

New York State law requires that before changes like outdoor dining are adopted, the significant environmental impacts of the program must be disclosed and mitigated to a practical extent. The Temporary Emergency Open Restaurants Program had significant unmitigated environmental impacts in many parts of the City. Any new program that is considered needs to have its environmental impacts disclosed and mitigated. We should follow the law and ensure that New York’s outdoor dining program is environmentally sound.

Further, the following topics are of special concern:

- **Noise**
 - Open facades and open windows in residential and mixed-use areas should be prohibited.⁴ Amplified music outdoors is not allowed in any outdoor dining or drinking area currently, and this provision should be included in any permanent plan, and vigorously enforced.⁵
 - To respect the rights of New York residents to the quiet use of their homes, closing times for outdoor dining spaces in residential and mixed-use neighborhoods should be the later of 6 pm or sunset.
 - It is vitally important to protect the health and well-being of New York residents and the quiet needed by school-age children to study. The negative health impacts of

³ Genuine public uses of public space include, but are not limited to, provisions for neighborhood loading zones, free bike parking for non-commercial bikes, residential parking permits, metered visitor parking, and expanded street tree planting programs.

⁴ Residential and mixed-use neighborhoods with high restaurant density will experience serious adverse effects from a little-understood provision of [Resolution No. 53](#) (also known as LU-12 or the Zoning, Open Restaurants Text Amendment, Citywide - N210434 ZRY) passed by the City Council on February 24, 2022. That provision will allow for open facades (e.g., garage-door style facades) for restaurants and bars irrespective of the resulting crowd and music noise conveyed to adjacent residences. Resolution No. 53 will go into effect at any point that its companion legislation, Intro 31-A, is enacted.

⁵ While amplified music at outdoor dining sites is against the rules of the Temporary Emergency Open Restaurants program, there has been scant enforcement of this provision.

- excessive noise are well-documented,⁶ and codified in New York City’s Noise Code,⁷ and a recent report from Columbia University finds that new uses of street space are a major factor in increased noise adversely affecting New Yorkers.⁸
- **Other health and access issues: pedestrian clear path (mitigating sidewalk congestion and trip and fall hazards)**
 - All sidewalks must have at least an eight-foot clear path for pedestrians. When a sidewalk is 16 feet or wider, the clear path must be 50% of the width of the sidewalk.
 - Consequently, the minimum practical width for dining sites is 12 feet. Pedestrians must have eight feet while four feet is for service and dining.
 - There should be limitations on outdoor dining in certain areas with very high pedestrian traffic, which reflects the Zoning Resolution’s prior sidewalk café regulations.
- **Other health and access issues: clean air**
 - Outdoor restaurant and bar locations are and should remain subject to the NYC Smoke-Free Air Act and the New York State Clean Indoor Air Act. Workers have the right to clean air in the workplace and adjacent residential dwellers should enjoy the option of opening their windows without filling their homes with secondhand smoke from tobacco or cannabis products.
- **Disability and public access**
 - Restaurants and bars participating must provide restroom capacity that accommodates their increased seating capacity.
 - Restaurants and bars participating in outdoor dining must provide ADA-compliant access to dining areas and ADA-compliant restrooms to prevent a grandfathered non-ADA compliant use from increasing its level of non-compliance.
- **Fire safety**
 - No outdoor dining setups shall be permitted to block any means of entry, exit, or means of egress from any building.
 - Propane heaters should not be permitted in public outdoor dining spaces. (See also, Climate Change, below.)

⁶ See, for example, Hahad O, Kröller-Schön S, Daiber A, Münzel T. “The Cardiovascular Effects of Noise,” *Deutsche Arzteblatt International* 2019; 116(14) :245-250. doi:10.3238/arztebl.2019.0245 (Available at: <https://www.aerzteblatt.de/int/archive/article/206509>); Ralph KE, Shev A, Paksarian D, et al. “Environmental noise and sleep and mental health outcomes in a nationally representative sample of urban US adolescents,” *Environmental Epidemiology* 2019; 3(4):e056. Published 2019 Aug 13. doi:10.1097/EE9.000000000000056. (Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6693982/>).

⁷ New York City’s noise regulations ([N.Y.C. Admin. Code §§24-202](#), enacted pursuant to Local Law 103, adopted 2005) notes that “It is the public policy of the city that every person is entitled to ambient sound levels that are not detrimental to life, health and enjoyment of his or her property.”

⁸ Jaime Benavides, et al. “Unintended impacts of the Open Streets program on noise complaints in New York City,” *Environmental Research*, Volume 224, 2023 (Available at: <https://doi.org/10.1016/j.envres.2023.115501>).

- Require and enforce compliance with the National Grid/Con Edison Outdoor Dining Safety guidelines: No outdoor café objects on top of or over manhole covers, ventilated covers, transformer grates, utility valve covers, or gas vents. These guidelines apply to objects of any kind such as tables, seating, planters, carpets, surface coverings, and decorative treatments.
- **Sanitation**
 - All restaurant outdoor dining fixtures and furniture must be removed and stored within restaurant interiors at night to allow for sidewalk cleaning.
 - Garbage must not be stored in outdoor dining set-ups nor placed outdoors during restaurant hours, nor may it be placed in front of residential buildings at any time.
 - Restaurant garbage must only be stored in areas that the restaurant controls and cannot be stored in any residential areas of mixed-use buildings.
- **Climate Change**
 - Given the reality of climate change, and the fact that New York City has declared a Climate Emergency,⁹ no electrical, propane heating, natural gas heating, or air conditioning of any kind should be permitted in public spaces used for drinking, dining, or other nightlife purposes.

5. ENFORCEMENT

The failure of the DOT to conduct timely enforcement during the temporary program has dramatically eroded community confidence in city agencies. That confidence must be restored. For any permanent outdoor dining that replaces the pre-pandemic sidewalk café program to be acceptable in residential and mixed-use neighborhoods, enforcement of all regulations must be vigorous and timely.

- Primary management and regulation of the outdoor dining program should be returned to DCWP, the agency that effectively managed the sidewalk café program prior to the pandemic. Some DCWP staff should be dedicated solely to the outdoor dining program with funding fully supported by licensing/revocable consent fees. Adequate dedicated staffing figures would be determined by the total number of outdoor dining locations.
- To ensure neighborhood habitability, DCWP must conduct routine inspections of outdoor dining sites as well as respond to 311 complaint clusters; promptly issue violations; post violation records on a public-facing website and maintain an accurate database of violations in NYC OpenData.
- DSNY, FDNY, DOHMH, and any other agency involved in enforcing regulations related to the outdoor dining program, should similarly conduct routine inspections, pursue

⁹ On June 26, 2019, the New York City Council passed [Resolution 864](#) declaring a climate emergency and calling for an immediate emergency mobilization to restore a safe climate. And in 2015 the Council adopted [Local Law 92](#) that made it “unlawful to keep open any exterior door or window of a commercial building or structure while an air conditioner or central cooling system is operating that cools the area adjacent to such door or window”. That was a sensible climate protection law. However, in 2017, the Council exempted restaurants from this commonsense provision when it adopted [Local Law 122](#). We believe that restaurants and bars should not be given special exemptions when it comes to the climate emergency.

additional inspections consequent to 311 complaint clusters, issue violations, post violation records on a public-facing website, and maintain an accurate database of violations in NYC Open Data.

- Other agencies involved in enforcing regulations – DSNY, FDNY, DOHMH, etc. – will also similarly conduct routine inspections, pursue additional inspections consequent to 311 complaint clusters, issue violations, post violation records on a public-facing website, and maintain an accurate database of violations in NYC Open Data.
- To serve as a deterrent to violations, fines need to be significant and should be consistent with DEP-ECB fine schedules for other business entities. For example, “Causing or permitting unreasonable noise, 6 PM to 7 AM, 1st Offense, \$450, 2nd Offense \$700.”¹⁰
- Any significant health or safety violations should result in an immediate suspension of operations until violations are cured.

6. PROGRAM COSTS, ELIGIBILITY, APPLICATION PROCESSES, AND LICENSING FEES:

The outdoor dining program should be at least revenue neutral: costs associated with administration and enforcement must be supported through market rate licenses and revocable consent fees, with a sliding scale based on fair market value: expensive for most of Manhattan and significantly discounted elsewhere. These provisions support a vision of borough-wide participation.

- **Eligibility**

- Any eating or drinking establishment with an uncured violation in the Temporary Open Restaurants program is ineligible to apply for participation in the permanent outdoor dining program. After the permanent program is adopted, any eating or drinking establishment seeking a renewal outdoor dining license must cure any existing violations prior to filing.

- **Application Processes**

- Community Boards must have adequate time to review outdoor dining applications and renewals. The time permitted by Intro 31-A would not permit both Community Board committees and the full board to consider applications. Forty-five (45) days is the minimum time for application review.¹¹
- The time frame for Community Board review must be commensurate with the total number of outdoor dining sites. If the total outdoor dining sites in any Community

¹⁰ Intro 31-A, §20-227.1 (3)e, (p. 18) includes the provision that “. . . any person found to be operating an unlicensed sidewalk cafe or roadway cafe or any holder of a license found to be operating a sidewalk cafe or roadway cafe in violation of this subchapter, the terms and conditions of such license or a revocable consent, or rules promulgated by the department pursuant to this subchapter **shall be subject to a civil penalty of zero dollars for a first violation . . .**” [emphasis added].

¹¹ Intro 31-A §20-226 (b) reduces Community Board review time from 45 to 30 days and notes that unreviewed applications will be considered approved, or unopposed (p. 11-12). The proposed new timeframe will curtail – even eliminate – Community Board review and community input. Any application received after the relevant Community Board committee had met for the month could not be considered at that month’s Full Board meeting. As such, some applications would be rolled over to the following month and would routinely exceed the proposed new 30-day review period. The result: many applications would be approved by the agency in charge without Community Board review.

District is limited to 100, or the pre-pandemic number of sidewalk cafés, then a 45-day review time remains appropriate. If the number of sites in any Community District exceeds the proposed ceiling of 100 sites or the pre-pandemic number of sidewalk cafés, then the review time must be increased proportionately to ensure adequate review.

- As Community Board members are volunteers, many of the City’s boards adjourn for two months in summer. Therefore, applications will require additional review time between July 1st and Labor Day, and this should be codified in any legislation or rules regarding application review.
- **Licensing/Revocable Consents**
 - Fees for licensing and/or revocable consents for use of public space for outdoor dining should reflect the fair market value of the space.
 - Licenses and revocable consents shall be issued for a period of two years, with renewals reviewed by Community Boards.

7. CONCLUSION

The Community Blueprint for Outdoor Dining provides a framework for regulations that protect all who have an interest in our shared public space while increasing outdoor dining opportunities in communities that seek to dedicate sidewalk space for this purpose. Rather than letting the restaurant and bar industry cut to the front of the line and use public curb space for private profit, let’s open a public process for all New Yorkers to have a say in reimagining our shared public spaces.

Let’s prioritize non-commercial public and community needs – loading zones used by all businesses and residents, bike parking for non-rental bikes, new solutions for trash removal, and residential and visitor parking permits. And while we’re at it, let’s add more trees – our streets can use the shade and the beauty of more climate-friendly trees. Let’s rebuild New York City for a post-pandemic and climate-friendly future that serves all New Yorkers and our many visitors.